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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re EMMA C., a Person Coming Under
the Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

JAMES C.,

Defendant and Appellant;

D.M.,

Defendant and Respondent.

G040905

(Super. Ct. No. DP016912)

O P I N I O N

Appeal from orders of the Superior Court of Orange County, Salvador
Sarmiento, Judge. Affirmed.

Robert McLaughlin, under appointment by the Court of Appeal, for Defendant and Appellant.

Benjamin P. de Mayo, County Counsel, Karen L. Christensen and Debbie Torrez, Deputy County Counsel, for Plaintiff and Respondent.

Deborah A. Kwast, Public Defender, Frank Ospino, Assistant Public Defender, Robert Mueller and Paul DeQuattro, Deputy Public Defenders, for Defendant and Respondent D.M.

Brent Riggs, under appointment by the Court of Appeal, for the Minor.

* * *

The father appeals the court's disposition orders, arguing that the court abused its discretion by placing the child in foster care near the mother in California rather than with relatives in Michigan. Given the facts, we find no abuse of discretion. The father also argues that an order preventing further visitation in Michigan until certain requirements are met is vague and not supported by substantial evidence. We find that no objection to this order was raised in the trial court, and it should be resolved there by an appropriate motion before seeking appellate review.

I

FACTS

In March 2008, D.M. (the mother) moved from Michigan to California with her four-year-old daughter, Emma. Both sets of Emma's grandparents and James C. (the father) remained in Michigan. The parents were not married, and prior to the mother's move from Michigan, had not lived together for a year. The father had an arrest record which included driving under the influence and domestic violence. He did not pay child support.

In April, the Orange County Social Services Agency (SSA) detained Emma due to allegations of neglect, caretaker absence, child endangerment, and filed a petition pursuant to Welfare and Institutions Code section 300, subdivision (b).¹ The juvenile court detained Emma and ordered an expedited ICPC (Interstate Compact for the Placement of Children) report for Emma's paternal and maternal grandparents. The father was permitted visitation.

In May, Emma was placed with a foster family. The mother was arrested on May 24 for driving under the influence of alcohol. SSA's jurisdiction/disposition report recommended that the court sustain the petition and order reunification services for both parents, with placement consideration for relatives. Emma's maternal and paternal grandparents had been approved for placement, but the mother expressed her desire to remain in California and did not want Emma returned to Michigan.

SSA initially acceded to the mother's request, recommending that Emma remain in California. In an addendum report in July, however, SSA recommended that Emma be placed with the maternal grandparents in Michigan. Although the mother continued to object, SSA believed it would be in Emma's best interests to return to Michigan where she would have the support of the father and both sets of grandparents. SSA recommended the maternal grandparents due to concerns that the paternal grandparents harbored animosity toward and resentment of the mother.

In August, Emma began a two-week visit with her maternal grandmother in Michigan. Provisions were made for visits with the paternal grandparents and the father, and the visit apparently went well. SSA thereafter filed an addendum report recommending placement with the maternal grandparents.

¹ Subsequent statutory references are to the Welfare and Institutions Code.

A contested disposition hearing was held in late August. The only issue at the hearing was placement — keeping the child in California with a foster family or placing her with the maternal grandparents in Michigan. Testimony and SSA's reports relating to the father revealed a number of ongoing concerns. The father visited with Emma during her trip to Michigan; however, he told SSA that he was living with someone, and the child could not come to his home. The father had not made any attempts to gain custody of Emma and he indicated distrust of both Michigan and California agencies. He has said he would do anything to reunite with the child, but also told the social worker that he had not done anything and therefore did not believe he should have to participate in services. While the father had completed a parenting class, SSA believed he had ongoing problems with alcohol.

With respect to the mother, the social worker testified that the mother had complied with her case plan. Visits between the mother and Emma had gone well and they appeared bonded to each other. She believed Emma's best interests would be served by placement with the maternal grandparents, but did not believe that keeping her in California was inappropriate. She also thought that the ill will harbored by the paternal grandparents toward the mother could interfere with the relationship between mother and child, because if Emma was placed in Michigan, the paternal grandparents would likely monitor the visits between Emma and the father.

After testimony and argument, the court removed Emma from her parents' custody and declared her a dependent of the court. The court vested custody with SSA for suitable placement, but also found that at the time, the mother had a better possibility of completing the reunification plan. Thus, the court found it was in Emma's best interests to remain in California. The court also suspended visitation in Michigan until such time as monitoring could be addressed satisfactorily. The father now appeals,

claiming that both of the court's rulings were an abuse of discretion. SSA did not file a respondent's brief, but the mother did, arguing that the court's rulings should be upheld.²

II

DISCUSSION

California Foster Placement

The mother's initial argument is that the father does not have standing to contest the placement order. While we agree with the mother that "many facts would have to change before the father could achieve a realistic chance to reunify," her argument that "denial of placement with the relative in Michigan d[oes] not impede or impair the father's right to visit," misses the mark. It may not impair his legal right to visit, but it certainly impedes his practical ability to do so. Thus, the father has a legally cognizable interest in the child's placement that is sufficient to confer standing. (*In re Carissa G.* (1999) 76 Cal.App.4th 731, 734.) Further, section 361.3 explicitly provides that when deciding whether to place a dependent child with a relative, the court is to consider the wishes of the parent. (§ 361.3, subd. (a)(2).)

We review the juvenile court's custody placement orders for abuse of discretion. "Broad deference must be shown to the trial judge. The reviewing court should interfere only "if we find that under all the evidence, viewed most favorably in support of the trial court's action, no judge could reasonably have made the order that he did." [Citations.]' [Citation.]" (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067; accord, *Alicia B. v. Superior Court* (2004) 116 Cal.App.4th 856, 863.)

The relevant statutory framework for relative placement is provided by section 361.3. Under subdivision (a) of section 361.3, relatives who request placement of a dependent child are to be given preferential consideration. Preferential consideration

² SSA did appear at oral argument. Although SSA acknowledges its position in the trial court, counsel for SSA stated it did not believe the court had abused its discretion.

means that the relative seeking placement is to be the first placement to be considered and investigated. (§ 361.3, subd. (c)(1).) “[T]he court is not to presume that a child should be placed with a relative, but is to determine whether such a placement is *appropriate*, taking into account the suitability of the relative’s home and the best interest of the child. [Citation.]” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 321.) The preference for placement with a relative, moreover, “does not operate in a vacuum.” (*In re Luke L.* (1996) 44 Cal.App.4th 670, 679-680.) A court must balance the right of a parent to attempt reunification with the child’s interest in a beneficial placement in the home of a relative.

In this case, there were strong arguments to be made on both sides. On the one hand, there were qualified relatives prepared to accept placement. The father and the paternal relatives lived sufficiently close by to permit visitation. SSA felt that the child would benefit from the stability and support. On the other hand, the court found that reunifying with the mother was more likely than reunification with the father, and wanted to keep the mother and child in close proximity to facilitate reunification and visitation.³ Given the strong arguments on both sides, we must defer to the trial court. We certainly cannot say that in this situation, no reasonable judge would have made this decision. (*In re Robert L.*, *supra*, 21 Cal.App.4th at p. 1067.) There was no abuse of discretion.

Visitation in Michigan

The amended visitation order permits the father twice weekly monitored visitation while he is in California. At the conclusion of the disposition hearing, the court expressed concern with the evidence regarding the problematic relationships between the

³ We reject, as unsupported by the record, the father’s argument that the court’s decision was “primarily” based on the concern that the father and paternal grandparents would interfere with the mother’s attempts to reunify. While the record shows this was a concern of the court’s, our reading of the record does not show that it was the court’s only or main reason for its decision.

father, paternal grandparents, and the maternal grandparents. The court did not permit further visitation in Michigan until it was assured that appropriate monitoring was in place.

The father thus claims that the court lacked substantial evidence to “suspend” visitation in Michigan. He claims that the court’s order was vague as to what must occur before Emma will be permitted to visit, and unclear as to the evidence the court needed before it would allow Emma to leave California.

The father, however, never asked for clarification from the trial court. The mother argues he should be required to do so before seeking an appellate remedy, and we agree. “[A] reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been but was not made in the trial court. [Citation.] The purpose of this rule is to encourage parties to bring errors to the attention of the trial court, so that they may be corrected. [Citation.]” (*In re S.B.* (2004) 32 Cal. 4th 1287, 1293, fn. omitted.) Further, “[d]ependency matters are not exempt from this rule. [Citations.]” (*Ibid.*)

Application of this rule is not automatic, but we find it is appropriate here. The trial court is in a far better position than this court to articulate precisely what it had in mind when it made the instant ruling, which appears to be supported by the record. Returning to court may not be necessary in any event, as the court gave SSA power to work with the father toward resolving monitoring issues. Further, the court invited the father to file a 388 petition if visitation is not arranged within a reasonable period of time.

III
DISPOSITION

The court's orders are affirmed.

MOORE, J.

WE CONCUR:

O'LEARY, ACTING P. J.

FYBEL, J.